

Board of Adjustment
Minutes
May 11, 2016

Meeting was called to order at 6:00 p.m. by Chairperson Moe Richardson.
Those in attendance: Moe Richardson, Lori Boren, Gary Ulch and Liz Sparks.
Absent: Roch Player. Also in attendance: Zoning Administrator, Matt Siders,
Donna Jordan with the Meadowbrook Condominium Association, Cathy
Stoner, Dan Stoner, Jackson Kutcher, Keaton Kutcher and Dave Kutcher.

1. Approval of Agenda. Motion made by Sparks to approve the agenda, seconded by Ulch. Carried all.
2. Approval of minutes from February 2, 2016. Motion to approve minutes made by Boren, seconded by Ulch. Carried all.
3. Public Hearing and discussion and possible action on a request for a variance for a fence, 8 feet in height, behind the properties beginning at 1211 3rd Street SW and ending at 1305 3rd Street SW, Mount Vernon, Iowa. Siders explained that the property on Summit Ave. SW that runs along the back yards of the three homes is being used to stable horses, which is an agricultural use that is not permitted in a Traditional Residential zone. At one time the Summit Avenue property was a small farm on the edge of the city limits. Mount Vernon extended its city limits encompassing the farm and zoned the area Traditional Residential for housing development. The farm's agricultural use was grandfathered into the residential development for so long as the current owner owns the land and continues to use it for agricultural purposes. Donna Jordan and Cathy Stoner explained that the residents know about and accept the grandfathered right of the farm owner to raise livestock, but that use is unattractive, smells bad, and sometimes the horses neigh and seem to be agitated when homeowners are visible on their decks or in the back yards. The affected residents request permission to build an 8 foot high fence, 2 feet higher than allowed by zoning regulations, which will be sufficient to block the view between the back yards and the horse corral. Although a fence will not stop smells or noise, blocking the view will help shield the residences from the horse farm. Siders confirmed that Mount Vernon zoning regulations prohibit agricultural uses in residential neighborhoods because agricultural uses, including stabling horses, creates unpleasant conditions for homeowners and is therefore considered totally incompatible with residential neighborhoods. This nuisance condition exists only because of the grandfathered use.

Board members discussed that it is appropriate to grant a variance to a property owner who is negatively impacted by an adjacent non-conforming use to allow

the property owner to mitigate the negative impact. Because the horse farm has the grandfathered right to be adjacent to residential homes, the homeowners may be given a variance to take action at their expense to shield their property from the negative impact of the horse farm if the Board members determine that the requested action is consistent with Traditional Residential zoning.

Board members then went over the requirements for granting a variance which are summarized below:

Does the property have an unusual shape or topography that creates exceptional difficulties for using the property for its zoned use? (exceptional narrowness, unusual shape or topography) No

(a) Strict application of the zoning ordinance will produce undue hardship and would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance. Correct. The horses/corrals to the back of their property have been grandfathered in to the TR zone where with current zoning regulations do not permit livestock. For this reason, there is an undue hardship to the property owner.

(b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity. Correct. They do not have livestock on the other side of their property line.

(c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance. Correct. The higher fence will be adjacent to a horse corral and not to other residences, so no other residential property will have yard sight lines blocked by the higher fence.

(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. Correct. See answer to (a) above.

(e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to this Zoning Ordinance. Correct. This is a unique situation due to grandfathered livestock in the rear yards of these residents.

(f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution. Correct. Permitting this will help shield the current residential lots from the grandfathered non-residential use and will make the lots more residential.

Boren made a motion to grant the variance permitting the construction of an 8 foot fence along the rear property line of the properties beginning at 1211 3rd Street SW and ending at 1305 3rd Street SW, Mount Vernon, Iowa. Motion seconded by Ulch. Sparks offered an amendment to the motion to add the condition that when the grandfathered agricultural use terminates and residences are built on the Summit Ave. SW property consistent with Traditional Residential use, the 8 foot fence be converted to a 6 foot fence in compliance with zoning regulations for the benefit of the new residences. 1 vote in favor of the amendment, 3 votes against. The amendment failed. Richardson called for a vote on the Motion before the Board. 3 votes in favor, 1 opposed. The Variance is granted.

4. Public Hearing and discussion and possible action on a request for a variance for a garage, 23 feet in height, from peak to grade at 1111 Palisades Road SW. Siders explained that Mr. Kutcher submitted a building permit for a garage, 23 feet in height, which is higher than the maximum height allowed of 20 feet. The property is located in the Traditional Residential zone and the maximum height for any detached garage is 20 feet. Siders quoted a section from the Mount Vernon Code, Article 7, Section 702 (setback adjustments), #6F. It states "In residential districts the maximum height shall be 12 feet for a detached garage and 10 feet for any other accessory building. Additionally, and without any increase to the height of sidewalls of a detached garage or accessory building based on the aforementioned maximum height limitations, the height and pitch of the roof may be increased if, at the discretion of the Zoning Administrator, that increase is necessary to compliment the pitch and style of the primary residential structure. However, in no event shall a detached garage or accessory building exceed the height of 20 feet as measured from the established grade to the highest point of the structure". On his letter of denial of the building permit, Siders stated the above and this is the reason for the denial. David Kutcher said they could look at trying to limit the structure to 20 feet but if they do they believe it would defeat the purpose of the code. To make the roof at 20 feet it would take the pitch out of it and make the roof flat and would not tie into the home at all. They are trying to build the garage to match the home so that the gables would have the same type of decorative siding. If they flatten down the roof they won't have that. Kutcher explained that the building would not be very visible to the public and they went around to the neighbors to see if they had any objections, which they did not. Boren asked Kutcher why the sidewalls would need to be 12 feet and if they could be

lowered. Kutcher said they could be lowered but even if they were it wouldn't be under the 20 feet due to the span of the trusses. If the width of the structure were smaller, the span of the trusses would be smaller and the height could meet the height requirement. Kutcher provided a few addresses of properties that had garages that exceed the maximum height but Ulch explained that the ordinance had changed since those garages were built. Siders explained that the homeowner is not planning on renting out the building or utilizing it for commercial recreation, it will be for personal use only.

Board members briefly went over the list of properties provided by the applicant that had garages or buildings that exceeded the height requirements. Ulch commented that regardless of what the other structures have, the current ordinance states 20 feet and finds it irrelevant. Sparks said that every request for a variance stands on its own merit and it is irrelevant whether anyone else received one for whatever their conditions were.

Board members then went over the requirements for granting a variance which are summarized below:

Does the property have an unusual shape or topography that creates exceptional difficulties for using the property for its zoned use? (exceptional narrowness, unusual shape or topography) No

(a) Strict application of the zoning ordinance will produce undue hardship and would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance. No, a detached garage can be built on this property within the permitted maximum height which is the rights commonly enjoyed by other properties in TR.

(b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity. NA

(c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance. Correct.

(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. No

(e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a

general regulation to be adopted as an amendment to this Zoning Ordinance. No, it is of a general nature, the Zoning Commission should address the inconsistency between the maximum height for attached and detached structures, and the arbitrary 20 feet height limit that can make impossible the objective of having the detached structure complement the pitch and style of the primary residential structure.

(f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution. Correct.

Ulch made a motion to deny the variance for a 23 foot garage located at 1111 Palisades Road SW. Motion seconded by Sparks. Carried all. Variance denied.

5. Discussion regarding electing a chairperson to Board of Adjustment and adding verbiage to Section 13 of the Zoning Ordinance. Sparks explained that in Article 1309, a(3) of the zoning code it explains, “The Board of Adjustment shall adopt rules and regulations as authorized or required by this ordinance and the Code of Iowa”, which she understands to mean that the board could adopt rules for how they are going to operate that are consistent with the ordinance and the Code of Iowa. Siders had asked whether the Zoning Commission would have to change language in the zoning regulations to put all of the rules in it but that would not be necessary according to the above mentioned section. During previous discussions, the board decided that they could adopt forms and better information to communicate with applicants but never completed the rules part of it. The board briefly discussed rules on election of chairperson, secretary duties and application and meeting procedures that should will be discussed in more detail at a future meeting when there is a full quorum of board members.

Meeting adjourned at 7:57 p.m., May 11, 2016.

Respectfully submitted,
Marsha Dewell
Deputy Clerk